

question of recognition of a decree determining the marital status of the parties.

The court further found that non-recognition of the decree would lead to a situation which was contrary to public policy and good morals.

### **Conclusion**

1. If two spouses both citizens and residents of the Netherlands would invoke the jurisdiction of a foreign court to obtain a divorce on a ground not recognized in the Netherlands, a decree rendered by such court would not be recognized in the Netherlands on the ground of violation of public policy. If it were granted on the ground of adultery, the decree would be recognized.

2. In the event that one of the spouses is a citizen of another state, and the spouses would invoke the jurisdiction of a third state to terminate their marriage on grounds not recognized in the Netherlands, the court would give effect to a decree rendered in such state if it were recognized in the state of the other spouse.

3. The effect of foreign judgments in the Netherlands on the marital status of Netherlands citizens residing abroad is the same as for Netherlands citizens residing in the Netherlands and 1) and 2) apply accordingly.

## **SPAIN**

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Spain, subject to applicable rules of reciprocity, they generally recognize and enforce foreign judgments <sup>1</sup> provided they meet required minimum standards.<sup>2</sup> The procedure for enforcement calls for obtainment of exequatur, ordered by the Spanish Supreme Court, without which no effect will ordinarily be given to the foreign judgment.

Legal provisions concerning recognition of foreign judgments,

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<sup>1</sup> Ley de Enjuiciamiento Civil, Articles 951-954.

<sup>2</sup> In the absence of positive or negative reciprocity, these requirements, as set forth in Article 954, are: judgment obtained in personal action, duly authenticated, not obtained by default and underlying obligation lawful in Spain.

however, are not applicable to divorce decrees, an area of the law in which Spanish public policy plays a vital role. Spanish law absolutely prohibits vincular divorce and, as a matter of policy, foreign divorces are not recognized in Spain. It follows that exequatur will not be granted for foreign judgments of divorce.<sup>3</sup>

Spanish law did not always take such a jaundiced view of absolute divorce. During the brief years of the Republican regime, a rather liberal divorce law was enacted<sup>4</sup> allowing divorce for a wide variety of causes, including mutual consent. Although conflict of law provisions were not contained in the new law,<sup>5</sup> the Spanish Supreme Court liberally applied conflict rules to uphold the valid exercise of Spanish divorce jurisdiction.<sup>6</sup>

The defeat of the Republican regime in the Spanish Civil War signalled the return to the traditional Spanish policy upholding the Catholic sacramentality of marriage and absolutely prohibiting vincular divorce.<sup>7</sup> For some twenty-seven years, therefore, Spanish law has not permitted and does not permit divorce, the very term *divorcio* in Spanish law signifying only the separation of the spouses.

Foreign divorce decrees fare no better in the eyes of Spanish law which, in matrimonial questions involving Spaniards, rejects the test of domicile in favor of the application of national law<sup>8</sup> and, at least in the case of Catholic marriages, rejects the latter in favor of public policy where Spanish nationals are not involved.

The Spanish Supreme Court, accordingly, has not hesitated to apply the principle of non-recognition of foreign divorces when faced with the question. In one case,<sup>9</sup> it declared null the subsequent foreign

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<sup>3</sup> Cf. *Tribunal Supremo*, Decision of March 12, 1942.

<sup>4</sup> Decree Law of March 2, 1932.

<sup>5</sup> "Inexplicably," according to one commentator, Cf. 2 MIAJA DE LA MUELA, *DERECHO INTERNACIONAL PRIVADO*, 297 (3d. Ed. 1963).

<sup>6</sup> Thus, Spanish courts applied Spanish law to dissolve an Italian marriage, where the wife was Spanish, on the theory that the Italian courts would apply Italian law, denying divorce, in a reciprocal situation. *Tribunal Supremo*, Decision of January 27, 1933.

<sup>7</sup> This was accomplished by a series of decrees commencing with the Decree of March 2, 1938, suspending all actions for separation and divorce. There followed the Decree of November 9, 1938, declaring final all judgments of intermediate courts denying separation or divorce and the Decree of September 23, 1939, abrogating the 1932 Divorce Law as being "radically opposed to the profound religious feeling of Spanish society."

<sup>8</sup> Civil Code, Article 9.

<sup>9</sup> *Tribunal Supremo*, Decision of March 12, 1942.